Court No. 2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

A.O. No. 471 of 2003

United India Insurance Company Ltd.
Through Branch Manager,
Branch Kailash Gate, Muni-ki-Reti-,
District – Tehri Garhwal.

..... Appellant.

Versus

Smt.Urmila Uniyal and six others.

..... Respondents.

Sri D.S.Patni, learned counsel for the appellant.
Sri Rajendra Kotiyal, learned counsel for the claimants/respondents.

Date: 27th Aug., 2004.

Hon'ble P.C.Verma,J.
Hon'ble B.S.Verma,J.

This appeal has been preferred by the Opp.party/ appellant against the judgment and order dated 29th Sept., 2003 passed by the Motor Accident Claims Tribunal/District Judge, Tehri Garhwal in Motor Accident Claim Petition No.69 of 2001, whereby the appellant-United India Insurance Company has been directed to pay Rs. 12,03,000/- as compensation to the claimants alongwith interest at the rate of 6% per annum.

2- Brief facts giving rise to this appeal are that on 12.5.2001 while deceased Surendra Datt Uniyalm was going to Dehradun from Rishikesh, at Brahmapuri on Rishikesh-Badrinath motor road, P.S. Muni-ki-Reti, District-Tehri Garhwal by the rash and negligent driving of the driver of bus No. UP 07A/3768, the bus met with an accident resulting that Surendra Datt died on the spot. The claimants, who are dependents of the deceased, filed the claim petition for

compensation on account of loss suffered due to death of Surendra Datt Uniyal.

3- The opposite parties contested the case before the Tribunal by filing their separate written statements. The O.P.No.1-owner-cum-driver of the vehicle admitted the accident and stated that the accident in question took place due to technical failure in the vehicle. The O.P.No.2-Insurance Company denied the allegations of the claim petition and stated that the offending vehicle was being driven without a valid driving licence in violation of the terms of the policy. The Tribunal framed necessary issues in the case and allowed the claim petition accordingly. Feeling aggrieved, the Insurance Company has come up in this appeal.

4- The learned counsel for the appellant-Insurance Company pressed this appeal only on the ground that the driver of the alleged vehicle was not having hill endorsement which is in violation of the Motor Vehicles Rules and no liability can be fixed against the appellant. In this regard the Tribunal framed issue No.2 which reads as under:-

> "Whether the driver of the ill fated bus was not having a valid driving licence on the date of accident ? if so, its effect ?"

5- The Tribunal while deciding the above issue gave its finding that the driving licence of the driver was valid upto 05.8.2002 and the accident in question is said to have occurred on 12.5.2001 well within the period of validity of the driving licence. The Insurance Company did not adduce any contrary evidence which could show that the drive of the ill-fated bus was not having a valid driving licence on the date of the accident. In view of this clear cut finding, it does not lie in the mouth of the appellant to reiterate the matter before this Court. We have gone through the entire material on record and perused the impugned judgment. For the sake of

argument if it is true that the drive of the offending bus was not authorized to drive on the hills, but only on that count, the Insurance Company cannot be absolved from its liability to pay the compensation. We are fortified in our view by the verdict of the Apex Court in the Case of ***National Insurance Company Limited versus Swaran Singh and others,*** *reported in 2004 (3), supreme Court Cases, Page 297,* in which the Apex Court has elaborately discussed all the relevant provisions of the Sec. 149(2)(a)(ii), 149(7), 168 and 174 of the Motor Vehicles Act, 1988 and paragraph 110 of the said case in fully applicable to the contention as raised by the learned counsel for the appellant. Following the ratio of the pronouncement of the Apex Court, we are of the opinion that the Insurance Company must first satisfy the award before the learned Tribunal and then can file its objection, if it so desires, before the executing court for redressal of its grievances about the dispute between the insurer and the insured by that court/tribunal in accordance with the provisions of the Act. However, nothing has been shown to us on behalf of the appellant-Insurance Company so as to warrant any interference with the findings arrived at by the learned Tribunal in the case under appeal. Accordingly, the appeal fails on merit.

6- The appeal is dismissed with the aforesaid observations. The impugned judgment and award is affirmed. No order as to costs. Amount, if deposited in the appeal, shall be remitted to the concerned Tribunal within a period of three months from today.

(B.S.Verma,J.) **(P.C.Verma,J.)**

P.Singh